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15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17 OAKLAND DIVISION

18 SUCCESSFACTORS, INC, a Delaware  
 19 corporation,

20 Plaintiff,

21 vs.

22 SOFTSCAPE, INC., a Delaware corporation,  
 23 and DOES 1-10, inclusive,

24 Defendants.

25 Case No. CV 08-1376 CW (BZ)

26 **DECLARATION OF JEFFREY M.  
 27 RATINOFF IN SUPPORT OF  
 28 PLAINTIFF'S MOTION FOR  
 ADMINISTRATIVE RELIEF TO FILE  
 UNDER SEAL PORTIONS OF  
 PLAINTIFF'S REPLY MEMORANDUM  
 IN SUPPORT OF ITS MOTION TO  
 COMPEL PRODUCTION OF  
 DOCUMENTS, FURTHER  
 INTERROGATORY ANSWERS AND  
 PROPER PRIVILEGE LOGS**

29 Special Discovery Master Jack Russo

1 I, Jeffrey M. Ratinoff, declare:

2       1. I am an attorney licensed to practice law before all courts in the State of California,  
 3 and the United States District Court for the Northern District of California. I am Of Counsel with  
 4 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (“Mintz Levin”) in its Palo Alto, California  
 5 office and I, along with other attorneys at Mintz Levin, and Ronald M. Davids, are attorneys of  
 6 record for Defendant Softscape, Inc. (hereinafter “Softscape” or “Defendant”). I submit this  
 7 declaration in support of Plaintiff’s Motion for Administrative Relief to File Under Seal Portions of  
 8 Plaintiff SuccessFactors, Inc.’s (“SuccessFactors” or “Plaintiff”) Reply Memorandum in Support of  
 9 Its Motion to Compel Production of Documents, Further Interrogatory Answers and Proper  
 10 Privilege Logs. (Docket No. 217.)

11       2. I have personal knowledge of the matters set forth herein and could and would  
 12 competently testify thereto. In making this declaration, it is not my intention, nor the intention of  
 13 Softscape, to waive the attorney-client privilege, the attorney-work product immunity, or any other  
 14 applicable privilege.

15       3. On April 23, 2008, the Court entered a Protective Order in this case. (Docket No.  
 16 89.) Pursuant to Section 10 of that order, any documents filed in this action containing confidential  
 17 information must be filed under seal in accordance with Civil Local Rule 79-5.

18       4. More recently, on June 30, 2008, the Court ordered that portions of the parties’ Joint  
 19 Case Management Statement be filed under seal “as they contain information not otherwise  
 20 available to the public, the disclosure of which could cause substantial risk of harm.” (Docket No.  
 21 148.) This sealed information was obtained from the deposition testimony of Dave Watkins,  
 22 Softscape’s CEO, and has been designated Highly Confidential by Softscape under the terms of the  
 23 Protective Order. The sealed portions of the case management statement, narrowly tailored to five  
 24 lines of the case management statement, pertain to two specific topics, (1) the status of the New  
 25 Millennium Shoe business entity (“NMS”); and (2) the conduct of Softscape in regard to a specific  
 26 named business entity. (*See id.*; Docket No. 149 at 3–4; *cf.* Docket No. 212.)

27       5. Accordingly, SuccessFactors requested that it be allowed to file under seal two  
 28 specific portions of its Reply Memorandum in Support of Its Motion to Compel Production of

1 Documents, Further Interrogatory Answers and Proper Privilege Logs.

2       6. On pages 9 and 10 of the Reply Memorandum, Plaintiff refers to the same  
 3 information that was previously ordered sealed in the Joint Case Management Statement by the  
 4 Court and, thus, “contains information not otherwise available to the public, the disclosure of which  
 5 could cause substantial risk of harm.” (Docket No. 148.) These sections of Plaintiff’s reply brief  
 6 discuss the status of NMS and Softscape’s business activities with regard to a specific named  
 7 business entity.

8       7. Specifically, page 9, lines 8–12, includes sealed information that was designated  
 9 “Highly Confidential - Attorneys Eyes Only” as it refers to private financial information of NMS, a  
 10 third party entity, and the disclosure of which could result in injury to that third party. And, at a  
 11 minimum, it is the type of information that the third party would not normally reveal outside of the  
 12 entity except in confidence or unless steps were taken to maintain its confidentiality. In addition,  
 13 this portion of page 9 includes sealed information regarding Softscape’s business activities in  
 14 connection with a named business entity; this information was designated “Highly Confidential -  
 15 Outside Attorneys Eyes Only” and sealed by the Court as it refers to extremely sensitive,  
 16 confidential business information whose disclosure to another party or non-party could create a  
 17 substantial risk of serious injury that can be avoided by keeping the information confidential.  
 18 Similarly, page 10, lines 21–22, also includes sealed information that was designated “Highly  
 19 Confidential - Outside Attorneys Eyes Only” under the Protective Order since it contains sensitive,  
 20 confidential business information disclosure of which could create a substantial risk of serious  
 21 injury.

22       8. Softscape therefore requests that page 9, lines 8–12 (ending at the case citation), and  
 23 page 10, lines 21–22 (between the words “is” and “Thus”), of SuccessFactors’ Reply Memorandum  
 24 be filed under seal.

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26       ///

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9. In light of the foregoing, including the Court's prior sealing orders, I believe good cause exists to file the two referenced portions of SuccessFactors' Reply Memorandum under seal.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 5th day of September, 2008 at Palo Alto, California.

By: /s/ Jeffrey M. Ratinoff  
JEFFREY M. RATINOFF

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SUCCESSFACTORS, INC, a Delaware corporation,

Plaintiff,

vs.

SOFTSCAPE, INC., a Delaware corporation,  
and DOES 1-10, inclusive,

Defendants.

Case No. CV08-1376 CW (BZ)

**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
ADMINISTRATIVE RELIEF TO FILE  
UNDER SEAL PORTIONS OF  
PLAINTIFF'S REPLY MEMORANDUM  
IN SUPPORT OF ITS MOTION TO  
COMPEL PRODUCTION OF  
DOCUMENTS, FURTHER  
INTERROGATORY ANSWERS AND  
PROPER PRIVILEGE LOGS**

Special Discovery Master Jack Russo

Having considered the Motion for Administrative Relief to File Under Seal Portions of Plaintiff SuccessFactors, Inc.'s Reply Memorandum in Support of Its Motion to Compel Production of Documents, Further Interrogatory Answers and Proper Privilege Logs (Docket No. 217) and the supporting declarations of counsel, and all other matters presented to the Court, and finding good cause therefore, the Court, HEREBY ORDERS the following narrowly tailored portions of Plaintiff's Reply Memorandum to be filed under seal:

1. Page 9, lines 8–12 (ending at the case citation); and
2. Page 10, lines 21–22 (between the words “is” and “Thus”).

## **IT IS SO ORDERED.**

Dated:

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## Jack Russo Special Discovery Master

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